A BILL FOR AN ACT

CONCERNING AGRICULTURAL WORKERS' RIGHTS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

The bill:

- Removes the exemption of agricultural employers and employees from the Colorado "Labor Peace Act" and authorizes agricultural employees to organize and join labor unions; engage in protected, concerted activity; and engage in collective bargaining;
• Removes the exemption of agricultural labor from state and local minimum wage laws;
• Requires the director of the division of labor standards and statistics to promulgate rules to establish the overtime pay of agricultural employees for hours worked in excess of 40 hours per week or 12 hours in one day;
• Grants agricultural employees meal breaks and rest periods throughout each work period, consistent with protections for other employees;
• Requires agricultural employers to provide agricultural employees with access and transportation to key service providers;
• Authorizes agricultural employees to have visitors at employer-provided housing without interference from other persons;
• Requires agricultural employers to provide overwork and health protections to agricultural employees;
• Prohibits the use of the short-handled or long-handled hoe for agricultural labor except in specific circumstances;
• During a public health emergency, requires an agricultural employer to provide extra protections and increased safety precautions for agricultural employees;
• Creates the agricultural work advisory committee to study and analyze agricultural wages and working conditions; and
• Creates rights, remedies, and enforcement actions for aggrieved agricultural employees, whistleblowers, relators, and key service providers.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, add 8-2-206 as follows:

8-2-206. Agricultural employers - agricultural employees - violations - penalties - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ADVERSE ACTION" MEANS A DEMOTION, REASSIGNMENT TO A LOWER-RANKED POSITION OR TO A POSITION WITH A LOWER LEVEL OF COMPENSATION, DECREASE IN COMPENSATION LEVEL, DENIAL OF
PROMOTION, OR TERMINATION OF EMPLOYMENT; OR OTHER DECISION FOR EMPLOYMENT PURPOSES THAT ADVERSELY AFFECTS AN AGRICULTURAL EMPLOYEE.

(b) "AGRICULTURAL EMPLOYEE" MEANS A PERSON EMPLOYED BY AN AGRICULTURAL EMPLOYER.

(c) "AGRICULTURAL EMPLOYER" HAS THE SAME MEANING SET FORTH IN SECTION 8-3-104 (1).

(d) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION.

(e) "DIVISION" MEANS THE DIVISION OF LABOR STANDARDS AND STATISTICS IN THE DEPARTMENT OF LABOR AND EMPLOYMENT.

(2) THE RIGHTS, REMEDIES, AND PENALTIES SPECIFIED IN THIS SECTION ARE IN ADDITION TO ANY RIGHTS, REMEDIES, OR PENALTIES AVAILABLE TO AGRICULTURAL EMPLOYEES UNDER ARTICLE 3 OR 6 OF THIS TITLE 8, PART 2 OF ARTICLE 13.5 OF THIS TITLE 8, ARTICLE 14.4 OF THIS TITLE 8, OR ANY OTHER REMEDIES AVAILABLE PURSUANT TO LAW.

(3) (a) AN AGRICULTURAL EMPLOYER SHALL NOT RETALIATE AGAINST ANY PERSON, INCLUDING AN AGRICULTURAL EMPLOYEE, ASSERTING OR SEEKING RIGHTS PROTECTED UNDER ARTICLE 3 OR 6 OF THIS TITLE 8, PART 2 OF ARTICLE 13.5 OF THIS TITLE 8, ARTICLE 14.4 OF THIS TITLE 8, INCLUDING COMPLAINING PUBLICLY OR SUPPORTING AN AGRICULTURAL EMPLOYEE SEEKING OR ASSERTING RIGHTS, REMEDIES, OR PENALTIES UNDER THOSE PROVISIONS OF THIS TITLE 8, OR ANY OTHER REMEDIES AVAILABLE PURSUANT TO LAW.

(b) THERE IS A REBUTTABLE PRESUMPTION THAT AN AGRICULTURAL EMPLOYER THAT TAKES AN ADVERSE ACTION AGAINST AN
AGRICULTURAL EMPLOYEE WITHIN NINETY DAYS AFTER THE AGRICULTURAL EMPLOYEE HAS ASSERTED OR SOUGHT ANY PROTECTED RIGHTS, REMEDIES, OR PENALTIES UNDER ARTICLE 3 OR 6 OF THIS TITLE 8, PART 2 OF ARTICLE 13.5 OF THIS TITLE 8, ARTICLE 14.4 OF THIS TITLE 8, OR ANY OTHER REMEDIES AVAILABLE PURSUANT TO LAW HAS RETALIATED AGAINST THE AGRICULTURAL EMPLOYEE.

(c) An agricultural employee, a person who has a familial or workplace relationship with the agricultural employee, or a person with whom the agricultural employee exchanges care or support who has been aggrieved by retaliation by a person may assert a claim in district court for injunctive and equitable remedies, a penalty in the amount of the greater of the actual damages or ten thousand dollars for each violation, and attorney fees and costs.

(4) (a) If a person who has engaged in retaliation has violated this section or has violated Article 3 or 6 of this Title 8, Part 2 of Article 13.5 of this Title 8, or Article 14.4 of this Title 8 in a manner that has harmed an agricultural employee, the Director may commence an action in district court on behalf of the state of Colorado against the person who retaliated against:

(I) An agricultural employee;

(II) A person who has a familial or workplace relationship with the agricultural employee; or

(III) A person with whom the agricultural employee exchanges care or support.

(b) The Director may seek an order imposing restitution,
INJUNCTIVE AND EQUITABLE REMEDIES, AND AN APPROPRIATE PENALTY OF
MORE THAN ONE HUNDRED DOLLARS BUT NOT MORE THAN ONE THOUSAND
DOLLARS PER VIOLATION.

SECTION 2. In Colorado Revised Statutes, 8-3-104, amend the
introductory portion, (1), (11), and (12); and add (1.5) as follows:

8-3-104. Definitions. As used in this article ARTICLE 3, unless the
color otherwise requires:

(1) (a) "All-union agreement" means a contractual provision
between an employer or group of employers and a collective bargaining
unit representing some or all of the employees of the employer or group
of employers providing for any type of union security and compelling an
employee's financial support or allegiance to a labor organization.
"All-union agreement" includes, but is not limited to, contractual
provision for a union shop, a modified union shop, an agency shop
(meaning a contractual provision which provides for periodic payment of
a sum in lieu of union dues but does not require union membership), a
modified agency shop, a prehire agreement, maintenance of dues, or
maintenance of membership. "AGRICULTURAL EMPLOYER" MEANS A
PERSON THAT:

(I) REGULARLY ENGAGES THE SERVICES OF ONE OR MORE
EMPLOYEES OR CONTRACTS WITH ANY PERSON WHO RECRUITS, SOLICITS,
HIRES, EMPLOYS, FURNISHES, OR TRANSPORTS EMPLOYEES; AND

(II) IS ENGAGED IN ANY SERVICE OR ACTIVITY INCLUDED IN
SECTION 203 (f) OF THE FEDERAL "FAIR LABOR STANDARDS ACT OF
1938", 29 U.S.C. SEC. 201 ET SEQ., AS AMENDED, OR ENGAGED IN
"AGRICULTURAL LABOR" AS DEFINED IN SECTION 3121 (g) OF THE FEDERAL
"INTERNAL REVENUE CODE OF 1986", AS AMENDED.

(b) THE MEANING OF "AGRICULTURAL EMPLOYER" MUST BE
LIBERALLY CONSTRUED FOR THE PROTECTION OF PERSONS PROVIDING
SERVICES TO AN EMPLOYER.

(1.5) "ALL-UNION AGREEMENT" MEANS A CONTRACTUAL
PROVISION BETWEEN AN EMPLOYER OR GROUP OF EMPLOYERS AND A
COLLECTIVE BARGAINING UNIT REPRESENTING SOME OR ALL OF THE
EMPLOYEES OF THE EMPLOYER OR GROUP OF EMPLOYERS PROVIDING FOR
ANY TYPE OF UNION SECURITY AND COMPELLING AN EMPLOYEE'S
FINANCIAL SUPPORT OR ALLEGIANCE TO A LABOR ORGANIZATION.
"ALL-UNION AGREEMENT" INCLUDES, BUT IS NOT LIMITED TO,
CONTRACTUAL PROVISION FOR A UNION SHOP, A MODIFIED UNION SHOP, AN
AGENCY SHOP (MEANING A CONTRACTUAL PROVISION THAT PROVIDES FOR
PERIODIC PAYMENT OF A SUM IN LIEU OF UNION DUES BUT DOES NOT
REQUIRE UNION MEMBERSHIP), A MODIFIED AGENCY SHOP, A PREHIRE
AGREEMENT, MAINTENANCE OF DUES, OR MAINTENANCE OF MEMBERSHIP.

(11) (a) "Employee" includes any person: other than an
independent contractor, domestic servants employed in and about private
homes, and farm and ranch labor;

(I) Working for another for hire in the state of Colorado in a
nonexecutive or nonsupervisory capacity, and shall not be limited to the
employees of a particular employer and shall include INCLUDES any
individual whose work has ceased solely as a consequence of or in
connection with any current labor dispute or because of any unfair labor
practice on the part of an employer; and

(b) (II) (A) Who has not refused or failed to return to work upon
the final disposition of a labor dispute or a charge of an unfair labor
practice by a tribunal having competent jurisdiction of the same or whose
jurisdiction was accepted by the employee or his THE EMPLOYEE'S
representative;

(c) (B) Who has not been found to have committed or to have
been a party to any unfair labor practice under this article ARTICLE 3;

(c) (C) Who has not obtained regular and substantially equivalent
employment elsewhere; or

(c) (D) Who has not been absent from his THE PERSON'S
employment for a substantial period of time during which reasonable
expectancy of settlement has ceased, except by an employer's unlawful
refusal to bargain, and whose place has been filled by another engaged in
the regular manner for an indefinite or protracted period and not merely
for the duration of a strike or lockout. but shall not include any individual
employed in the domestic service of a family or person at his home or any
individual employed by his parent or spouse or any employee who is
subject to the federal "Railway Labor Act".

(b) "EMPLOYEE" DOES NOT INCLUDE:

(I) AN INDEPENDENT CONTRACTOR;

(II) DOMESTIC SERVANTS EMPLOYED IN AND ABOUT PRIVATE
HOMES;

(III) AN INDIVIDUAL EMPLOYED BY THE INDIVIDUAL'S PARENT OR
SPOUSE;

(IV) AN EMPLOYEE WHO IS SUBJECT TO THE FEDERAL "RAILWAY
LABOR ACT", 45 U.S.C. SEC. 151 ET SEQ., AS AMENDED; OR

(V) A PARENT, SPOUSE, OR CHILD OF AN AGRICULTURAL
EMPLOYER'S IMMEDIATE FAMILY.

(f) For purposes of this subsection (11), "farm" means stock,
dairy, poultry, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, orchards, and other structures used for the raising of agricultural or horticultural commodities, provided such structures are utilized for at least fifty percent of the total output produced:

(12) (a) (I) "Employer" means a person who regularly engages the services of eight or more employees, other than persons within the classes expressly exempted under the terms of subsection (11) of this section. and (II) "EMPLOYER" includes:

(A) Any person acting on behalf of an employer within the scope of his THE EMPLOYER's authority, express or implied; The term and

(B) AN AGRICULTURAL EMPLOYER.

(b) "EMPLOYER" does not include the state or any political subdivision thereof, except where the state or any political subdivision thereof acquires or operates a mass transportation system or any carrier by railroad, express company, or sleeping car company subject to the federal "Railway Labor Act", 45 U.S.C. sec. 151 et seq., AS AMENDED, or any labor organization or anyone acting in behalf of such organization other than when he THE EMPLOYER is acting as an employer-in-fact.

SECTION 3. In Colorado Revised Statutes, add 8-6-101.5 as follows:

8-6-101.5. Minimum wage for agricultural workers - rest periods - overwork protections - definition. (1) (a) On and after January 1, 2022, except as provided in subsection (1)(b) of this section, the minimum wage requirements of section 15 of article XVIII of the state constitution, and any minimum wage laws
ENACTED PURSUANT TO THIS ARTICLE 6, APPLY TO AGRICULTURAL
EMPLOYERS EMPLOYING AGRICULTURAL WORKERS.

(b) The Colorado minimum wage that an agricultural
employer must pay to an agricultural worker who is principally
engaged in the range production of livestock, as described in 29
CFR 780.323 to 29 CFR 780.329, on the open range is:

(I) Beginning January 1, 2022, and through December 31, 2022, five hundred fifteen dollars per week; and

(II) Beginning January 1, 2023, the minimum wage required
in the prior calendar year adjusted annually as measured by the
United States Department of Labor’s Bureau of Labor Statistics
consumer price index for Denver-Aurora-Lakewood or its
predecessor or successor index. The director may set a higher
minimum wage than is required in this subsection (1)(b)(II)
consistent with the director’s authority and duties, including
under this Article 6.

(2) (a) An agricultural worker is entitled to an
uninterrupted and duty-free meal period of at least a
thirty-minute duration when the agricultural worker’s shift
exceeds five consecutive hours. The meal periods, to the extent
practicable, must be at least one hour after the start, and one
hour before the end, of the shift. An agricultural worker must
be relieved of all duties and permitted to pursue personal
activities for a period to qualify as nonwork, uncompensated
time. If the nature of the business activities or other
circumstances makes the uninterrupted meal period impractical,
the agricultural employee must be permitted to consume an
ON-DUTY MEAL WHILE PERFORMING DUTIES. AN AGRICULTURAL
EMPLOYEE MUST BE PERMITTED TO FULLY CONSUME A MEAL OF CHOICE
WHILE WORKING AND BE FULLY COMPENSATED FOR THE ON-DUTY MEAL
PERIOD WITHOUT ANY LOSS OF TIME OR COMPENSATION.

(b) AN AGRICULTURAL WORKER IS ENTITLED TO AN
UNINTERRUPTED AND DUTY-FREE REST PERIOD OF AT LEAST TEN MINUTES
WITHIN EACH FOUR HOURS OF WORK.

(3) AS USED IN THIS SECTION, "AGRICULTURAL WORKER" HAS THE
MEANING SET FORTH IN SECTION 8-13.5-201 (3).

SECTION 4. In Colorado Revised Statutes, add 8-6-120 as
follows:

8-6-120. Overtime wages for agricultural workers - legislative
declaration. THE DIRECTOR SHALL PROMULGATE RULES PROVIDING
MEANINGFUL OVERTIME AND MAXIMUM HOURS PROTECTIONS TO
AGRICULTURAL EMPLOYEES TO BE PROPOSED NO LATER THAN OCTOBER
31, 2021 AND ADOPTED NO LATER THAN JANUARY 31, 2022. IN
PROMULGATING SUCH RULES, THE DIRECTOR SHALL CONSIDER THE
INEQUITY AND RACIST ORIGINS OF THE EXCLUSION OF AGRICULTURAL
EMPLOYEES FROM OVERTIME AND MAXIMUM HOURS PROTECTIONS
AVAILABLE TO OTHER EMPLOYEES, THE FUNDAMENTAL RIGHT OF ALL
EMPLOYEES TO OVERTIME AND MAXIMUM HOURS STANDARDS THAT
PROTECT THE HEALTH AND WELFARE OF EMPLOYEES, AND THE UNIQUE
DIFFICULTIES AGRICULTURAL EMPLOYEES HAVE OBTAINING WORKPLACE
CONDITIONS EQUAL TO THOSE PROVIDED TO OTHER EMPLOYEES.

SECTION 5. In Colorado Revised Statutes, add part 2 to article
PART 2

LABOR CONDITIONS FOR AGRICULTURAL WORKERS

8-13.5-201. Definitions. As used in this Part 2, unless the context otherwise requires:

(1) "Agricultural Employer" has the same meaning set forth in Section 8-3-104 (1).

(2) "Agricultural Employment" means employment in any service or activity included in Section 203 (f) of the federal "Fair Labor Standards Act of 1938", 29 U.S.C. sec. 201 et seq., as amended, or Section 3121 (g) of the federal "Internal Revenue Code of 1986", as amended.

(3) "Agricultural Worker" or "Worker" means a worker engaged in any service or activity included in Section 203 (f) of the federal "Fair Labor Standards Act of 1938", 29 U.S.C. sec. 201 et seq., as amended, or Section 3121 (g) of the federal "Internal Revenue Code of 1986", as amended.

(4) "Agricultural Worker's Representative" means a person or entity designated by an agricultural employee in a confidential, sealed filing with the court.

(5) "Department" means the Department of Labor and Employment.

(6) "Division" means the Division of Labor Standards and Statistics in the Department.

(7) "Key Service Provider" means a health care provider; a community health worker, including a promotora; an
EDUCATION PROVIDER; AN ATTORNEY; A LEGAL ADVOCATE; A GOVERNMENT OFFICIAL, INCLUDING A CONSULAR REPRESENTATIVE; A MEMBER OF THE CLERGY; AND ANY OTHER SERVICE PROVIDER TO WHICH AN AGRICULTURAL WORKER MAY NEED ACCESS.

(8) "Occasional or intermittent" means twenty percent or less of an agricultural worker's weekly work time.

(9) "Short-handled hoe" means a handheld tool with a flat blade affixed perpendicularly to a handle that is less than eighteen inches long. "Short-handled hoe" includes a long-handled hand tool that has been modified to be used as a short-handled hoe.

(10) "Whistleblower" means an agricultural worker with knowledge of an alleged violation of this part 2 or the agricultural worker's representative.

8-13.5-202. Agricultural workers - right of access to key service providers - rules. (1) (a) An employer shall not interfere with an agricultural worker's reasonable access to visitors at the agricultural worker's employer-provided housing during any time when the agricultural worker is present at such housing.

(b) An employer shall not interfere with an agricultural employee's reasonable access to key service providers at any location during any time in which the agricultural worker is not performing compensable work or during paid or unpaid rest and meal breaks, and with respect to health-care providers during any time, whether or not the agricultural worker is
To ensure that agricultural employees have meaningful access to services, the director of the division shall promulgate rules regarding additional times during which an employer may not interfere with an agricultural worker’s reasonable access to key service providers, including periods during which the agricultural worker is performing compensable work, especially during periods when the agricultural worker is required to work in excess of forty hours per week and may have difficulty accessing such services outside of work hours. The rules must be proposed on or before October 31, 2021, and adopted on or before January 31, 2022.

An employer may require visitors accessing a work site to follow protocols designed to manage biohazards and other risks of contamination, to promote food safety, and to reduce the risk of injuries to or from livestock on farms and ranches except on the open range, if the same protocols are generally applied to any other third parties who may have occasion to enter the work site.

An agricultural employer that provides housing and transportation for agricultural workers shall, at least one day per week, provide transportation to the agricultural workers to a location where the workers can access basic necessities, conduct financial transactions, and meet with key service providers; except that transportation must be provided not less than one day every three weeks for range workers who are actively engaged in the production of livestock on the open range.
RANGE. THIS SUBSECTION (1)(b) DOES NOT LIMIT OR RESTRICT AN AGRICULTURAL WORKER’S ABILITY TO TRAVEL USING THE AGRICULTURAL WORKER’S OWN MEANS OF TRANSPORTATION. NOTHING IN THIS SUBSECTION (1)(b) REQUIRES AN EMPLOYER TO VIOLATE A STATE OR FEDERAL LAW OR REGULATION.

(f) If an agricultural worker has access to the worker’s own vehicle and is permitted to park the vehicle on the employer’s property, the employer is not required to provide transportation as set forth in subsection (1)(b) of this section.

(2) No person other than the agricultural worker may prohibit, bar, or interfere with, or attempt to prohibit, bar, or interfere with, the access to or egress from the residence of any agricultural worker by any person, either by the erection or maintenance of any physical barrier, by physical force or violence or by the threat of physical force or violence, or by any order or notice given in any manner.

(3) An agricultural employer shall post notice of an agricultural worker’s rights under this part 2:

(a) In a conspicuous location on the agricultural employer’s premises, including in the agricultural worker’s employer-provided housing; and

(b) In all places where notices to employees, including agricultural workers, are customarily posted; and

(c) Electronically, including by e-mail and on an intranet or internet site, if the agricultural employer customarily communicates with agricultural workers by these means.

8-13.5-203. Extreme overwork protections - heat stress
training - short-handled hoe prohibited - rules. (1) The Director of
the division shall promulgate rules that require agricultural
employers to protect agricultural workers from heat-related
stress illnesses and injuries when the outside temperatures
reach eighty degrees or higher, with discretion to adjust
requirements based on environmental factors, exposure time,
acclimatization, and metabolic demands of the job as set forth
in the federal department of health and human services centers
for disease control and prevention national institute for
occupational safety and health 2016 revised publication:
criteria for a recommended standard, occupational exposure
to heat and hot environments. The rules must be proposed on or
before October 31, 2021, and adopted on or before January 31,
2022.

(2) (a) Using a short-handled hoe is prohibited in
agricultural employment for weeding and thinning in a stooped,
knelling, or squatting position.

(b) The performance of weeding and thinning by hand or
with a short-handled tool, other than a short-handled hoe, in
a stooped, knelling, or squatting position is strongly disfavored
unless there is no suitable long-handled tool or other
alternative means of performing the work that is suitable and
appropriate to both the production of the agricultural or
horticultural commodity and the scale of the operation.
Nothing in this subsection (2) is construed to allow the use of
the short-handled hoe.

(c) Beginning January 1, 2022, this subsection (2) does not
PROHIBIT:

(I) OCCASIONAL OR INTERMITTENT HAND WEEDING OR HAND THINNING IN A STOOPED, KNEELING, OR SQUATTING POSITION THAT IS INCIDENTAL TO A NON-HAND-WEEDING OPERATION;

(II) HAND THINNING OF HIGH DENSITY PLANTS SPACED LESS THAN TWO INCHES APART WHEN PLANTED;

(III) HAND WEEDING OR THINNING OF ANY AGRICULTURAL OR HORTICULTURAL COMMODITY GROWN IN FIELDS OR GREENHOUSES FOR WHICH THE EMPLOYER MAINTAINS A CURRENT CERTIFICATION FROM THE COLORADO DEPARTMENT OF AGRICULTURE OR AN AUTHORIZED CERTIFYING BODY AS MEETING THE STANDARDS OF THE UNITED STATES DEPARTMENT OF AGRICULTURE'S NATIONAL ORGANIC PROGRAM;

(IV) HAND WEEDING, THINNING, OR TENDING ANY AGRICULTURAL OR HORTICULTURAL COMMODITIES WHEN THEY ARE SEEDLINGS;

(V) HAND WEEDING, THINNING, OR TENDING AGRICULTURAL OR HORTICULTURAL COMMODITIES GROWN IN TUBS OR PLANTER CONTAINERS WITH AN OPENING THAT DOES NOT EXCEED FIFTEEN INCHES IN WIDTH;

(VI) SEEDING, PLANTING, TRANSPLANTING, OR HARVESTING BY HAND OR WITH A HAND TOOL; OR

(VII) HAND WEEDING, THINNING, OR TENDING THE SOIL-EXPOSED AREA IMMEDIATELY SURROUNDING AGRICULTURAL OR HORTICULTURAL COMMODITIES GROWN USING POLYETHYLENE FILM OR PLASTIC MULCH. THIS EXEMPTION DOES NOT PERMIT THE HAND WEEDING OF THE SPACES BETWEEN ROWS OF PLANTS GROWN USING POLYETHYLENE FILM OR PLASTIC MULCH.

(d) THE COMMISSIONER OF THE DEPARTMENT OF AGRICULTURE SHALL PROMULGATE RULES REGARDING ALLOWANCES FOR AND
LIMITATIONS TO HAND WEEDING AND HAND THINNING FOR AGRICULTURAL EMPLOYERS ACTIVELY ENGAGED IN THE TRANSITION TO CERTIFIED ORGANIC AGRICULTURE FOR A PERIOD OF NO MORE THAN THREE YEARS WHILE ENSURING THAT AGRICULTURAL WORKERS ARE NOT AT RISK OF ACUTE, CHRONIC, OR DEBILITATING INJURIES. THE RULES MUST BE PROPOSED ON OR BEFORE OCTOBER 31, 2021, AND ADOPTED ON OR BEFORE JANUARY 31, 2022.

(e) On or before January 31, 2022, the commissioner of the department of agriculture shall promulgate rules that establish a procedure for agricultural employers to seek a certificate of variance from the Colorado department of agriculture that allows for more than occasional or intermittent hand weeding of agricultural or horticultural products if the agricultural employer establishes that:

(I) The hand weeding does not involve prolonged and unnecessary stooping, kneeling, or squatting, and does not create a risk of acute, chronic, or debilitating injuries for agricultural workers;

(II) There is no suitable long-handled tool or other alternative means of performing the work that is suitable and appropriate to both the production of the agricultural or horticultural commodity and the scale of the operation; and

(III) The hand weeding cannot be performed pursuant to an existing exemption pursuant to this subsection (2).

(3) An agricultural employer shall provide agricultural workers engaged in hand weeding and hand thinning an additional five minute rest period, which, insofar as is
PRACTICABLE, MUST BE IN THE MIDDLE OF EACH WORK PERIOD. THE AUTHORIZED REST PERIOD MUST BE BASED ON THE TOTAL HOURS WORKED DAILY AT THE RATE OF FIFTEEN MINUTES NET REST TIME PER FOUR HOURS OF WORK, OR A MAJOR FRACTION THEREOF. THE AGRICULTURAL EMPLOYER SHALL COUNT THE AUTHORIZED REST PERIOD AS HOURS WORKED AND NOT DEDUCT THE REST PERIOD FROM THE AGRICULTURAL WORKER’S WAGES.

(4) AN AGRICULTURAL EMPLOYER SHALL PROVIDE GLOVES AND KNEE PADS, AS NECESSARY, TO EACH AGRICULTURAL WORKER ENGAGING IN HAND WEEDING, HAND THINNING, OR HAND HOT-CAPPING.

(5) IF ANY PROVISION OF THIS SECTION OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID OR UNCONSTITUTIONAL, SUCH PROVISION OR APPLICATION DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF THIS SECTION THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID OR UNCONSTITUTIONAL PROVISION OR APPLICATION, AND THE PROVISIONS OF THIS SECTION ARE SEVERABLE.

8-13.5-204. Enforcement - penalties - relief - rules. (1) AN AGGRIEVED AGRICULTURAL WORKER, A WHISTLEBLOWER, OR A KEY SERVICE PROVIDER WHO WAS UNABLE TO ACCESS AN AGRICULTURAL WORKER DUE TO A VIOLATION OF THIS PART 2 MAY COMMENCE AN ACTION IN DISTRICT COURT AGAINST AN AGRICULTURAL EMPLOYER FOR A VIOLATION OF THIS PART 2.

(2) (a) A COURT MAY:

(I) ORDER INJUNCTIVE RELIEF TO ENJOIN THE CONTINUANCE OF THE VIOLATION OF THIS PART 2;

(II) AWARD THE PLAINTIFF ACTUAL DAMAGES OR TEN THOUSAND DOLLARS, WHICHEREVER IS GREATER; AND
(III) Award the plaintiff attorney fees.

(b) Any amounts recovered by a whistleblower or key service provider pursuant to this section must be distributed to agricultural workers affected by the violation who can be located, insofar as such disbursement is economically feasible.

(3) An aggrieved agricultural worker or whistleblower is entitled to all rights, remedies, and penalties afforded under section 8-2-206.

8-13.5-205. Agricultural work advisory committee - creation - report - repeal. (1) On or before April 1, 2022, the director of the division shall establish the agricultural work advisory committee, referred to in this section as the "advisory committee". The advisory committee consists of nine members as follows:

(a) The director of the division shall appoint:
   (I) two members who have worked as agricultural workers; and
   (II) two members who are advocates of workers' rights;

(b) The commissioner of agriculture shall appoint:
   (I) three members who represent agricultural employers;
   and
   (II) two representatives from the migrant farm worker division of Colorado legal services, or its successor organization.

(2) (a) the terms of the members are four years.

(b) If a member fails to complete the member's term, the appointing authority shall appoint a new member to complete
THE REMAINDER OF THE TERM.

(c) Members shall serve without compensation for their service; except that members may receive a per diem as established by the Executive Director of the Department and reimbursement for travel and other necessary expenses incurred in the performance of their official duties.

(3) (a) The Advisory Committee shall gather and analyze data and other information regarding the wages and working conditions of agricultural workers and report its findings and any legislative recommendations to the General Assembly.

(b) To the extent possible, the Executive Director of the Department shall ensure that the Advisory Committee has the opportunity to meet with appropriate representatives from the Department of Labor and Employment, the Department of Public Health and Environment, the Department of Agriculture, and the Governor's Office for purposes of conducting its work pursuant to subsection (3)(a) of this section.

(c) Notwithstanding section 24-1-136 (11)(a)(I), on or before January 1, 2023, and each January 1 thereafter, the Advisory Committee shall report its progress, findings, and legislative recommendations to the Agriculture, Livestock, and Water Committee and the Business Affairs and Labor Committee of the House of Representatives, or their successor committees, and the Agriculture and Natural Resources Committee and the Business, Labor, and Technology Committee of the Senate, or their successor committees.

(4) This section is repealed, effective September 1, 2031.
BEFORE THE REPEAL, THE ADVISORY COMMITTEE IS SCHEDULED FOR
REVIEW IN ACCORDANCE WITH SECTION 2-3-1203.

SECTION 6. In Colorado Revised Statutes, 2-3-1203, add (22)
as follows:

2-3-1203. Sunset review of advisory committees - legislative
declaration - definition - repeal. (22) (a) THE FOLLOWING STATUTORY
AUTHORIZATIONS FOR THE DESIGNATED ADVISORY COMMITTEES WILL
REPEAL ON SEPTEMBER 1, 2031:

(I) THE AGRICULTURAL WORK ADVISORY COMMITTEE CREATED IN
SECTION 8-13.5-205.

(b) THIS SUBSECTION (22) IS REPEALED, EFFECTIVE SEPTEMBER 1,
2033.

SECTION 7. In Colorado Revised Statutes, 8-14.4-101, amend
(1), (3)(c), and (3)(d); and add (1.5) and (3)(e) as follows:

8-14.4-101. Definitions. As used in this article 14.4, unless the
context otherwise requires:

(1) "Department" means the department of labor and employment
"AGRICULTURAL EMPLOYMENT" HAS THE MEANING SET FORTH IN SECTION
8-13.5-201 (2).

(1.5) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND
EMPLOYMENT.

(3) "Principal" means:

(c) The state of Colorado, local governments, and political
subdivisions of the state as defined in section 1-7.5-103 (6); and

(d) An entity that contracts with five or more independent
contractors in the state each year; AND

(e) A PERSON OR ENTITY ENGAGED IN AGRICULTURAL
SECTION 8. In Colorado Revised Statutes, add 8-14.4-109 as follows:

8-14.4-109. Agricultural employers - responsibilities during public health emergency - worker safety protections. (1) During a public health emergency, in addition to the other protections and rights afforded to workers, a principal engaged in agricultural employment shall:

(a) Provide each worker living in employer-provided housing with:

(I) In a single-occupancy unit where the worker is housed alone, at least eighty square feet of combined sleeping and living quarters;

(II) In multiple-occupancy housing, at least one hundred square feet of sleeping quarters per worker and one hundred twenty square feet of space per worker in areas used for combined purposes such as meal preparation and eating; and

(III) In all housing, screened windows that open to the outside or living space that has an air filtration system;

(b) Provide each worker actively engaged in the open-range production of livestock with a single occupancy mobile housing unit, regardless of any variances otherwise available pursuant to 20 CFR 655.235.

(c) Allow the department of public health and environment to routinely inspect employer-provided housing to ensure compliance with guidelines issued by the department of public health and environment applicable to a public health
EMERGENCY AND ANY APPLICABLE EXECUTIVE ORDERS ISSUED BY THE
GOVERNOR DURING A DISASTER EMERGENCY DECLARED PURSUANT TO
SECTION 24-33.5-704 (4);

(d) PROVIDE TRAINING TO WORKERS CONCERNING SAFETY
PRECAUTIONS AND PROTECTIONS DURING A PUBLIC HEALTH EMERGENCY;

AND

(e) PROVIDE INFORMATIONAL AND EDUCATIONAL MATERIALS
THROUGH POSTERS AND PAMPHLETS WRITTEN IN ENGLISH AND SPANISH
AND ANY OTHER RELEVANT LANGUAGES IN EMPLOYER-PROVIDED
HOUSING, WORK SITES, AND OTHER PLACES WHERE THE PRINCIPAL
USUALLY POSTS INFORMATION FOR THE WORKERS THAT:

(I) LISTS THE CONTACT INFORMATION FOR THE MIGRANT FARM
WORKER DIVISION OF COLORADO LEGAL SERVICES, OR ITS SUCCESSOR
ORGANIZATION, WHERE A WORKER MAY RECEIVE FREE AND CONFIDENTIAL
LEGAL SERVICES; AND

(II) INFORMS THE WORKERS REGARDING FEDERAL AND STATE
GUIDANCE CONCERNING A PUBLIC HEALTH EMERGENCY.

SECTION 9. In Colorado Revised Statutes, 8-3-108, amend
(1)(c)(II)(A) and (1)(c)(II)(B) as follows:

8-3-108. What are unfair labor practices. (1) It is an unfair
labor practice for an employer, individually or in concert with others, to:

(c) (II) (A) Any agreement as defined in section 8-3-104 (†) (1.5)
between an employer and a labor organization in existence on June 29,
1977, which has not been voted upon by the employees covered by it
may, by written mutual agreement of such employer and labor
organization, be ratified and upon such ratification shall be filed with the
director. Any agreement as defined in section 8-3-104 (†) (1.5) between
an employer and a labor organization in existence on June 29, 1977, which has not been ratified and filed, as provided in this subparagraph (I) SUBSECTION (1)(c)(II), shall not be legal, valid, or enforceable during the remaining term of that labor contract unless and until either the employer, the labor organization, or at least twenty percent of the employees covered by such agreement file a petition upon forms provided by the division, demanding an election submitting the question of the all-union agreement to the employees covered by such agreement and said agreement is approved by the affirmative vote of at least a majority of all the employees eligible to vote or three-quarters or more of the employees who actually voted, whichever is greater, by secret ballot in favor of such all-union agreement in an election provided for in this paragraph (c) SUBSECTION (1)(c) conducted under the supervision of the director.

(B) Upon filing of such instrument of ratification with the director, the director shall certify that such agreement complies with the provisions of section 8-3-104 (1.5) notwithstanding the absence of any other election requirements of this article ARTICLE 3, and by virtue of such ratification and certification, such agreement shall be deemed legal, valid, and enforceable to the extent permitted under the provisions of this article ARTICLE 3, subject to the provisions of sub-subparagraph (D) of this subparagraph (II) SUBSECTION (1)(c)(II)(D) OF THIS SECTION.

SECTION 10. In Colorado Revised Statutes, amend 8-13.5-101 as follows:

8-13.5-101. Short title. This article shall be known and may be cited as THE SHORT TITLE OF THIS PART 1 IS THE "Workplace Accommodations for Nursing Mothers Act".

SECTION 11. In Colorado Revised Statutes, 8-13.5-102, amend
8-13.5-102. Legislative declaration. (2) The general assembly further declares that the purpose of this article PART 1 is for the state of Colorado to become involved in the national movement to recognize the medical importance of breastfeeding, within the scope of complete pediatric care, and to encourage removal of boundaries placed on nursing mothers in the workplace.

SECTION 12. In Colorado Revised Statutes, 8-13.5-103, amend the introductory portion as follows:

8-13.5-103. Definitions. As used in this article PART 1, unless the context otherwise requires:

SECTION 13. In Colorado Revised Statutes, amend 44-10-105 as follows:

44-10-105. Marijuana employee designation. An employee of a licensee is not an agricultural worker unless the employee is a farm laborer as described in section 8-3-104 (11) AT A FARM, PLANTATION, RANCH, NURSERY, RANGE, GREENHOUSE, ORCHARD, OR OTHER STRUCTURE USED FOR THE RAISING OF AGRICULTURAL OR HORTICULTURAL COMMODITIES, AS LONG AS THE STRUCTURE IS UTILIZED FOR AT LEAST FIFTY PERCENT OF THE TOTAL OUTPUT PRODUCED.

SECTION 14. Appropriation. (1) For the 2021-22 state fiscal year, $409,949 is appropriated to the department of labor and employment. This appropriation is from the employment support fund created in section 8-77-109 (1)(b)(I), C.R.S. To implement this act, the department may use this appropriation as follows:

(a) $371,667 for use by the division of labor standards and statistics for program costs related to labor standards, which amount is
based on an assumption that the division will require an additional 4.4 FTE; and

(b) $38,282 for the purchase of legal services.

(2) For the 2021-22 state fiscal year, $38,282 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of labor and employment under subsection (1)(b) of this section and is based on an assumption that the department of law will require an additional 0.2 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of labor and employment.

SECTION 15. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.